II. REMARKS

This application has been carefully reviewed in light of the Office Action dated August 10th, 2007.

Outstanding Rejections

Claims 1-3, 5-6, 20, 57 and 62 have been rejected under 35 USC 102 as being anticipated by US Patent 4,817,940 (Shaw).

Claims 4 has been rejected under 35 USC 103(a) over US Patent 4,817,940 (Shaw) in view of 6,458,060 (Watterson et al.), in further view of 6,527,674 (Clem).

Claims 7-11, 14-18, 21-24, 27-40, 42-53, 45, 49, 51, 53, 57-58, 66-69, 71-73 have been rejected under 35 USC 103(a) over US Patent 4,817,940 (Shaw) in view of 6,458,060 (Watterson et al.).

Claims 12-13 and 60 have been rejected under 35 USC 103(a) over US Patent 4,817,940 (Shaw) in view of 6,458,060 (Watterson et al.) in further view of 5,502,806 (Mohoney et al.).

Claims 63-64 have been rejected under 35 USC 103(a) over 6,458,060 (Watterson et al.) in view of 6,052,512 (Peterson et al.)

Claims 74-75 have been rejected over US Patent 4,817,940 (Shaw) in view of 6,458,060 (Watterson et al.) in further view of Netpulse.com.

Outstanding Objections

Claims 19, 25-26, 41, 44, 46-47, 50, 52, 54-56, 65 and 70 have been objected to based upon improper dependencies.

Claim 59 was objected based upon not being complete.

Amendments to the Claims and Response to Outstanding Rejections and Objections

Reconsideration and withdrawal of outstanding objections and rejections are

respectfully requested based upon the amendments to the claims.

Claims 2, 19, 25-26, 44, 46-47, 50, 52, 54-56, 65, and 70 have been cancelled.

Claim 7, has not been amended as regards "the different" type of exercise machine because antecedent basis is provided in independent claim 3, from which claim 7 depends.

All claims have been amended to apparatus form in view of the Federal Circuit decision *Muniauction, Inc v. Thomson Corporation* (July 14, 2008) and to correct dependencies.

Claim 59 is amended to include a period at the end of the claim to assure completeness.

Independent claims 1 and 3 have been amended to include the operation of:

> translating the private personalized exercise routine, stored in and retrieved from the portable memory device, to a different personalized private exercise routine for each different type of user-selected exercise equipment

and independent claim 76 has been amended to include the operation of:

> translating a private personalized exercise routine, stored in and retrieved from a portable memory device, to a different private personalized exercise routine for each different type of user-selected exercise machine

The cited art does not teach or disclose these features.

As to Shaw et al., the Examiner has cited col. 7, lines 45-58, as disclosing that the user has the ability to store in a personal module the exercises for a particular machine. However, Shaw does not teach the claimed operation of translating. The section cited for claim 3, is col. 3, lines 49-59, which has nothing to do with translating as claimed.

As to Watterson et al., the Examiner has cited col. 9, lines 41-46, figure 6, element 13, which is a translator for converting protocols between exercise equipment and computer systems, and not the claimed translating personalized private exercise routine … to a different personalized private exercise routine for each different type of user-selected exercise equipment. The translation of a communication protocol is not the same as translating personalized private exercise routine … to a different personalized private exercise routine for each different type of user-selected exercise equipment.

Though Watterson et al. teaches the ability to log into different excise equipment, Watterson et al. does not disclose the translating as claimed. Moreover, the Examiner has analogized logging into a network as equivalent to keeping information private in a portable memory device. As per the cited art, logging into a network is different than keeping the information private in the portable user memory device, as recited in the independent claims. Though logging onto a network may provide a method to access private information, logging onto a network is not the same as protecting instructions as private to a user on the portable storage device.

Shaw et al. teaches storing information on a portable personal memory, however, Shaw does not teach protecting instructions as private to a user, nor does it provide for allowing a login process to the device. Waterson et al. provides for logging onto a network system but does not teach logging onto a portable device for providing access and protecting instructions as private to a user. Without the instant application there is no teaching or evidence to provide protecting instructions as private to a user on a portable storage device as obvious, without hide-sight reconstruction.

As to claims 14, 72-73, the Examiner has improperly asserted that the language is “[n]on-functional descriptive matter. It is not functional interrelated with the useful acts of the

claimed invention and thus will not serve as limitation". However, the recited claim elements clearly recite machine operations involving specific datum and must be given weight. This is in contrast to the Examiner not giving patentable weight in claims 70 and 71.

Moreover, looking to the Examiner's citation of In re Lowery, id., which is directed to giving patentable weight to "data structures" stored in the memory of an apparatus, consistent with the Court's ruling, if an element is stored in memory of an apparatus, the element must be given patentable weight. Reconsideration is respectfully requested.

The individual teachings of US Patent 4,817,940 (Shaw), 6,458,060 (Watterson et al.), 6,527,674 (Clem), 5,502,806 (Mohoney et al.) and Netpulse.com, do not anticipate the claims as amended. Further, no evidence has been shown that the combination of any of their teachings would render the claims, as amended, as obvious.

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

III. CONCLUSION

The application, as amended, is considered in condition for allowance, which is respectfully requested.

APPLICANT CLAIMS SMALL ENTITY STATUS. The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235. Please direct all correspondence to the undersigned at the address given below.

If the prosecution of this case can be advanced in any way by a telephone discussion, the Examiner is requested to call the undersigned at (312) 240-0824.

Respectfully submitted,

Date: August 29, 2008

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